



# Restricting the right to picket and protest

TUC response to BIS Consultation on the Trade Union Bill

## Introduction

The Trades Union Congress (TUC) has 52 affiliated trade unions, representing nearly 6 million members who work in a wide variety of industries and occupations across the public and private sectors.

The Trade Union Bill and accompanying regulations will introduce wide-ranging measures designed to curtail the right to strike in the UK and to limit the ability of unions to represent their members' interests in the workplace. These provisions include the introduction of statutory thresholds for industrial action, extended notice periods and the removal of the ban on the supply of agency workers during strikes.

The right to strike is a fundamental human right which is protected by international treaties and human rights standards, including ILO Conventions, the UN Covenant on Social and Economic Rights, the European Social Charter (1961) and the European Convention on Human Rights.

The TUC is profoundly concerned that the Trade Union Bill and accompanying regulations will place the right to strike at risk in the UK. By placing additional legal hurdles in the way of unions organising strike action, the proposed legislation will undermine the ability of union members to organise collectively to protect their jobs, their livelihoods and the quality of their working lives.

We are also concerned that the government's proposals will damage constructive employment relations and effective working relations between unions and employers. They will lead to an imbalance of power in the workplace. As a result, employers will be able to impose changes to terms and working conditions, without securing agreement or taking the views of their workforce into account. This will demoralise employees and undermine workplace productivity. Reduced staff engagement is also likely to increase staff turnover, leading to higher recruitment and training costs for employers.

Alongside its measures on industrial action, the government is proposing to restrict the rights of trade unions and their members to picket and protest in defence of their jobs and economic interests. The right to picket and protest is a fundamental human right which is safeguarded by ILO Convention 87 (Article 3), the European Social Charter (Article 6(4)) and the European Convention on Human Rights (Articles 10, 11 and 14). Pickets and protests enable trade unions and their members to communicate the reasons and purposes of industrial action publicly, peacefully to persuade employees and substitute workers to support the industrial action and to mobilise support for their campaigns.

The Trade Union Bill and the government's accompanying consultations propose significant additional restrictions on picketing activities and union protests. Unions will be required to appoint picket supervisors who must wear armbands and carry letters of authorisation, the absence of which could expose their unions to legal action. They could also be required to publish picket and protest plans and to state in advance if they plan to use social media, including twitter and Facebook, during their campaign and what they plan to set out on websites and

blogs. As a result, the campaigning activities of unions, union officials and workplace reps could be subjected to unprecedented supervision by employers, the police and other government agencies, notably the Certification Officer. If this was not enough, the government is also contemplating introducing new criminal offences and even the use of community protection notices (previously known as ASBOs) to regulate the activities of pickets.

The TUC believes that these measures represent a serious and unjustified attack on the civil liberties of trade unions and their members. The government's proposals are also discriminatory. The new restrictions will only apply to trade unions and their members but not to other civil society organisations or campaign groups in the UK.

The TUC is also concerned that the government has failed to demonstrate that additional restrictions on trade unions are necessary or justified. The absence of substantiating evidence has attracted censure from the independent Regulatory Policy Committee.<sup>1</sup> The proposals have also been widely criticised by lawyers and politicians.

Leading civil liberties groups – Liberty, Amnesty International and the British Institute of Human Rights recently issued a joint statement criticising the government's proposals:

“The government's plans to significantly restrict trade union rights – set out in the Trade Union Bill – represent a major attack on civil liberties in the UK ..... Taken together the unprecedented measures in the Bill would hamper people's basic rights to protest and shift even more power from the employee to the employer. It is hard to see the aim of this bill as anything but seeking to undermine the rights of all working people.”<sup>2</sup>

In the light of such criticism, the TUC calls on the government to reconsider its proposals. We urge the government to concentrate on introducing policies which secure the economic recovery, invest in skills, deliver quality employment and increase workplace productivity rather than attacking the civil liberties of working people in the UK.

Responses to consultation questions

### Question 1:

**Most of this consultation focuses on specific proposals. Before turning to this detail, do you have any other evidence of intimidatory behaviour, directed either at non-striking or striking workers, that you believe should be considered as part of this consultation? If so, do you have any estimate of the economic impact of this?**

<sup>1</sup> <https://www.gov.uk/government/collections/red-rated-impact-assessment-opinions-since-may-2015>

<sup>2</sup> <https://www.liberty-human-rights.org.uk/news/press-releases-and-statements/trade-union-bill-represents-major-attack-civil-liberties-uk>

The TUC is seriously concerned that the government is planning to introduce tighter restrictions on picketing by trade unions without first demonstrating the case for reform. The Regulatory Performance Committee's (RPC) recent review of the government's impact assessment found that *'there is little evidence presented that there will be any significant benefits arising from the proposal.'*

The TUC is concerned that the government's legislative proposals may amount to a serious attack on the civil liberties of trade unions and their members, including the basic democratic rights to assemble and to protest and the right to freedom of expression. These rights are safeguarded by a range of international treaties and human rights standards. The TUC believes it is not legitimate for government to restrict the human rights of UK citizens on the basis of unsubstantiated allegations.

The proposals set out in the consultation document are not even-handed. For example, no consideration has been given to protecting striking workers from intimidation by their employers.

Union members and activists are highly vulnerable to intimidation and victimisation by employers if they contemplate or take part in industrial action. UK law provides such workers with very limited protections. Protections from dismissal for striking workers in the UK are limited and restricted to 12 weeks, after which employers are entitled to dismiss striking employees, providing they do not do so in a selective manner. Union members have no right to automatic reinstatement if they are unfairly dismissed for participating in industrial action. The absence of effective protections for striking workers has been roundly criticised by the ILO Committee of Experts and the European Social Rights Committee on a number of occasions.

These limited dismissal rights also only apply to 'employees' meaning that freelancers and the 'bogus' self-employed can be dismissed at will by the employer for exercising their democratic rights to strike. Agency workers and zero hours contract workers who are employed on 'no guaranteed hours' contracts can also simply be refused future work if they participate in industrial action. The workers have no right to legal redress in such cases. Trade union members and activists do not appear to be protected from detriment for action short of dismissal because they have participated in industrial action.<sup>3</sup> Individuals also regularly experience excessive deductions from pay when they participate in industrial action. It is not uncommon for employers to deduct a full day's pay when individuals take industrial action for an hour or two.

The TUC would call on the government to introduce a new framework of rights to protect those exercising their fundamental rights to strike. These include:

- Dismissals in anticipation of, during or after lawful industrial action should be void and ineffective, unless the employer can show that the reason for the dismissal was not connected to the industrial action.
- It should be automatically unfair for an employer to dismiss an employee once

---

<sup>3</sup> *London Borough of Islington v Hutchings* EAT 34/01.

he or she returns to work following lawful industrial action. This will act as a powerful disincentive to employers from employing replacement staff, dismissing strikers or making them redundant.

- Interim relief should be available in all unfair dismissal claims relating to lawful industrial action and employees who have been unfairly dismissed should be entitled to automatic reinstatement if they request it.
- All workers, including those on non-guaranteed hours contracts, should be protected from suffering detriment or for being sued for damage as a result of their taking part in industrial action (other than appropriate deductions from wages for work not done due to industrial action).

## Question 2:

**The Government is interested in whether there are any further gaps in the legal framework (see Box 1 below) in relation to intimidation of non-striking workers and third parties. How could the framework be strengthened - for example, should there be new criminal sanctions such as an offence of intimidation on the picket line?**

In the TUC's opinion, there are no gaps in the current legal framework which governs picketing or protests by trade unions and their members.

The conduct of those involved in picketing is heavily regulated in the UK by an extensive range of civil and criminal laws. Unions must comply with the requirements for peaceful pickets contained in section 220 of the Trade Union and Labour Relations (Consolidation) Act 1992. Failure to comply with these provisions will mean the union loses its statutory immunity for liability in tort and may be vulnerable to damages or injunctions preventing or restricting the picket.

Unions and their members are also subject to a range of laws on public order, highways protection from harassment and criminal damage. It is also a criminal offence for pickets to use violence or intimidate individuals or their families, to follow individuals from place to place, to hide work tools and to watch and beset an individual.

The TUC is mystified as to why the government is considering introducing a criminal offence of intimidatory activities on a picket line when such an offence already exists in Section 241 of the Trade Union and Labour Relations (Consolidation) Act 1992. Any duplicate offence would be excessive and unnecessary.

There is no case for introducing additional criminal offences or sanctions. In our opinion, scarce police resources would be better deployed protecting the wider community rather than monitoring the peaceful activities of trade union members.

The TUC is also concerned that the government's proposals do not comply with the requirements of international law, including ILO Conventions and the European Convention on Human Rights. Future offences will also only apply to trade unions and not to other civil society or campaign groups in the UK. This is discriminatory and may be inconsistent with Article 14 of the European Convention.

### Question 3:

**The Government is legislating to make a number of key aspects of the Code legally enforceable, such as the appointment of a picketing supervisor. Are there other practices that should be directly legally enforceable - for example, training or a requirement for all pickets to be properly identifiable in the same way as the supervisor? Please explain your views**

The TUC is firmly opposed to Clause 9 of the Trade Union Bill which will require unions to appoint a picketing supervisor to oversee the picket. The supervisor must either be an official or a member of the union. Unions must take steps to inform the police of the supervisor's name and how they can be contacted. They must be present at the picket or contactable by the police and available to attend the picket at short notice. The TUC is concerned that these provisions are likely to deter responsible individuals, who might otherwise have been willing, from volunteering to co-ordinate pickets.

The Bill also specifies that picket supervisors must wear an arm band or badge that identifies them. Supervisors must have a letter of authorisation from the union which they will be required to carry with them and present upon request to the police or 'to any other person who reasonably asks to see it'.

In our opinion, the provisions of the Bill are unwarranted and overly-prescriptive. As the RPC has pointed out, it is unclear how compliance with the detailed requirements of Clause 9 is connected to the prevention of intimidation of non-striking workers. There is no evidence that they will do anything to address the types of behaviour that the government claims to be seeking to address (nor, as we have set out above and the RPC has set out, that there is any evidence of the need to seek to do so).

The provisions will impose a significant amount of red tape on unions. It will also make it easier for employers to take legal action against a union. Such legal challenges are likely to escalate disputes and will make it more difficult to find an amicable settlement.

The sanctions accompanying these provisions are also excessive. It is disproportionate that a union should lose its statutory immunity from tortious liability simply because a union official accidentally forgets to wear an armband or has inadvertently misplaced their letter of authorisation. As a result, the union could face applications for injunctions preventing or imposing conditions on the pickets or even damages. The TUC believes such penalties are unjustified and conflict with the requirements of the European Convention on Human Rights, the European Social Charter and ILO Convention 87.

The TUC is also concerned that Clause 9(6) states that a picket supervisor must show the letter of authorisation to any police officer who asks to see it, even if there is no evidence of criminal behaviour. Furthermore, we are concerned that the interaction between a police officer and an individual could form the basis of a future legal challenge by the employer. These provisions could call into question the independence of the police in relation to industrial disputes.

Clause 9(6) also requires picket supervisors to show their letter of authorisation to anyone who reasonably asks to see it. This requirement is broader than the current wording of Code of Practice which requires the letter to be shown to ‘the people who want to cross the picket’. It is unclear why members of the public should be entitled to know the identity of picket supervisors. The TUC is also concerned that this requirement could encourage officious third parties, including security firms appointed by the employer or members of campaign groups such as the Trade Union Reform Campaign, to approach picket lines and to demand to see the individual’s letter of authorisation. This could unnecessarily aggravate pickets and could lead to needless tensions. This in turn could make it more difficult for the union to reach an amicable settlement with the employer thereby prolonging the dispute.

In the TUC’s opinion, additional elements of the Code of Practice should not be transposed into legislation. The BIS consultation document acknowledges that most pickets conform to the guidance set out in the Code and has provided no evidence of widespread violations which would justify giving it a legislative basis. The existing Code is therefore effective as a regulatory tool. There is no justification for imposing additional legislative regulations on unions.

Requiring unions to identify pickets, in the same way as the picket supervisor, would be excessive and would be a form of intimidation. Many individuals would fear being victimised by their employer or even ‘blacklisted’. They would therefore be unreasonably deterred from exercising their fundamental democratic rights.

Unions already make sure that union officials are familiar with the laws governing picketing. If Clause 9 comes into effect, unions will ensure that picket supervisors are aware of their additional responsibilities and the implications of not complying with them. However, the TUC believes it would be excessive and unreasonable for the government to impose a legal duty on unions to train officials in law relating to picketing. No equivalent duty applies to employers. If the government decides to act on this proposal, they should also introduce legislation requiring employers to send all line managers on employment law courses.

#### **Question 4:**

#### **Do you have any figures that would enable us to estimate any costs to unions generated by making aspects of the Code legally enforceable?**

The provisions contained in Clause 9 of the Trade Union Bill will create significant additional costs for unions, and as we discuss further below, the assumptions of the costs to unions in the government’s impact assessment are a substantial underestimate. The costs to unions will go far beyond those of familiarising themselves with the legislation (which, given union activists and workplace representatives will need to be acquainted with the legislation as well as full time union officers will in themselves be far beyond those costs estimated by BIS). Full time officers will also need to spend significant amounts of time undertaking detailed monitoring of the activities of local trade union members, to

ensure compliance with the legislation, which will incur significant costs for unions.

Unions will face an increased risk of legal challenge by employers on the basis that picket supervisors have failed to comply with the new requirements. As a result, unions will need additional legal advice and will need to meet the costs of any litigation. The prospect of litigation may also increase tensions and mean that disputes are more difficult to resolve. Unions could also face significant costs for damages from employers if they are found not to be compliant with technical aspects of the requirements.

The prescriptive nature of Clause 9 will also have a deterrent effect on individuals who might otherwise have volunteered to act as a picketing supervisor.

The TUC believes that it would be unreasonable for the government to place a legal duty on unions to train officials in law relating to picketing. This would create significant additional costs for unions which would be exacerbated by the government's withdrawal of the fee remission arrangements for trade union education, which is due to take effect from 1<sup>st</sup> August 2016.

Union representatives could also lose out as a result of these proposals. Increasing constraints on facility time mean that union representatives, particularly in the public sector, will find it difficult to negotiate release time to attend union education courses. Workplace representatives could be required to attend courses in the evenings or weekends or take annual leave in order to participate. This would interrupt individual's time for family life and wider caring responsibilities.

### **Question 5:**

**What are your views on the Government's proposal to require unions to publish their plans? What information should unions be required to provide? Please set out the reasons for your answer.**

The TUC is opposed to the government's proposal to require unions to publish picketing and protest plans in advance of taking industrial action.

If the proposals are implemented, unions would be required to publish plans 14 days in advance of any action taking place. The government proposes that the plans would need to specify when a union is intending to hold a picket or protest, where it will be, how many people it will involve and whether they plan to use 'loudspeakers, props, banners etc.' The government's proposals may even require unions to report on plans to use Twitter or Facebook accounts. The consultation document also suggests that unions will have to report in advance on the likely content of any websites or blogs.

Although the government suggests that unions will have the chance to update their plans once the industrial action has started, they also note that if unions do not provide updates or if they fail to provide initial notification of their intended activities, they could face enforcement action, including penalties imposed by the Certification Officer.



In the TUC's opinion, these measures represent a serious attack on the civil liberties of trade unions and their members – rights which are protected by the European Convention on Human Rights.<sup>4</sup> The government's proposals may also conflict with ILO Convention 87 (Article 3) and the European Social Charter 1961 (Article 6(4)).

The TUC is concerned that the government's proposals are discriminatory. No other campaign groups in the UK are obliged to comply with such requirements. They may therefore conflict with the requirements of Article 14 of the European Convention on Human Rights.

The TUC is concerned that the government's proposals could lead to an unacceptable level of supervision of picketing and union protest activities by the state. According to the consultation document, unions will be required to provide copies of the picket and protest plans to the employer, the police and the Certification Officer.

There is also a suggestion that the Certification Officer and his/her inspectors will be expected to inspect pickets and protests on a 'real time' basis. The TUC believes this would equate to excessive and unjustified monitoring by a government agency of the activities of trade unions and their members as they exercise their fundamental, democratic rights to assemble and protest.

The TUC is also concerned that the proposals could have the effect of limiting unions' rights to freedom of expression and those of union officials and activists. The government has not explained why unions should be required to report on their intended use of social media during the course of a dispute or how the police or Certification Office are expected to use this information. We are concerned that this proposal is designed to deter unions and their members from using social media to promote their campaigns and to mobilise support. This could have the effect of stifling democratic debate.

There is also a concern that the requirement on unions to provide notice of their campaign activities could lead to increased monitoring of trade union communications and activities. This would be a matter of serious concern to the TUC and the wider union movement. These concerns have been heightened in the light of recent revelations that blacklisted union activists in the construction sector were the subject of state surveillance.

The TUC is not aware of any other organisations which are required to inform the police or state agencies if they plan to use social media or when or how they plan to use websites to prompt lawful campaign messages. In our opinion, this requirement is excessive and discriminatory.

The government's proposals are not even-handed. Unions will be required to notify employers that industrial action will be taking place 14 days in advance, but employers are not required to announce whether they plan to use agency workers to break the strike. Employers will also be under no obligation to publish

---

<sup>4</sup> *Gate Gourmet v TGWU*

a notice detailing their plans to campaign against the industrial action, including how they plan to communicate with union members.

The government has claimed<sup>5</sup> that the measures will not apply individual union members. However, the TUC expects that employers will argue that unions are responsible for the actions of union officials, including full-time officers, branch secretaries and union workplace representatives. Given the realities of how social media works, it can be difficult to differentiate between accounts run by organisations and those which represent the personal views of those employed by or who are members of those organisations. Will a union member who changes their twitter profile to reflect their union's logo be considered to have been tweeting on behalf of the union or of themselves? Will a workplace representative whose Twitter profile recognises their voluntary union role be seen as running a personal or an organisational account? We anticipate that these complexities will lead to endless legal challenges on whether tweets were written and posted on behalf of the union or in a personal capacity. The overall effect of these measures will be to constrain rights to freedom of expression for unions and individual members and activists.

The TUC also believes that the sanctions proposed for failure to comply with the notice requirements are excessive and unjustified. The consultation document suggests that unions who fail to publish accurate and up to date notices could face financial penalties of up to £20,000, imposed by the Certification Officer.

We are also concerned that if this proposal proceeds, the Certification Officer will have wide-ranging powers to initiate complaints against the union, to investigate the activities of the union and to decide which penalties should be imposed on the union. This would not be consistent with basic principles of justice.

The TUC also notes that government has not so far ruled out the possibility that unions who fail to publish an accurate notice of their picket and protest plan may lose immunity from liability in tort under section 220 of TUL(C)RA 1992. Were this to be the case, unions would face an increased risk of legal challenges by employers for minor technical oversights in the notice. The TUC believes it would be unreasonable and disproportionate for unions to face an injunction preventing the picket from taking place or claims for damages simply because they failed to list a twitter account being used by a branch secretary. Such legal challenges will increase tensions between employers and their employees. They will make it more difficult for the union and the employer to negotiate a settlement. The proposal is therefore likely to prolong disputes and delay the point at which employees return to work and the organisation returns to normal productivity levels.

The TUC is also concerned that the reporting requirements will create significant costs and administrative burdens for unions. If the Certification Officer is to be tasked with enforcing any new notice requirements, this will also lead to direct additional costs for unions through the proposed levy which will be charged to unions to cover the running costs of the Certification Office.

---

<sup>5</sup> <http://www.bbc.co.uk/news/uk-34017423>

Unions could be expected to monitor and report on the Facebook accounts and twitter feeds of branches, union officials, branch officials and even workplace representatives. This will inevitably divert union officials' time and energy away from working with employers to find solutions to disputes.

The government has suggested that the requirement to publish plans would assist unions to identify which activities are being undertaken in the union's name and would give them the option of repudiating non-official pickets and protests. The TUC suspects that the government's real purpose in making this proposal is to encourage tensions between the union and its members. This proposal is, however, likely to prove counterproductive not only for unions but also for employers. If a union repudiates the actions of its members, union officials and indeed employers will find it increasingly difficult to convince the workforce to return to work. This will escalate disputes, making them more difficult to settle.

Overall, the TUC believes that the government's proposals represent a serious attack on the fundamental rights of trade unions and their members to protest in defence of their job, their livelihoods and their working conditions. The proposals seek to limit freedom of speech and as such will be bad for democracy. The measures will do nothing to encourage the earlier settlement of disputes, promote good employment relations or to increase workplace productivity. The TUC therefore calls on the government not to proceed with the proposals.

#### **Question 6:**

#### **Do you have any figures that would enable us to improve the estimates in the Impact Assessment of the cost to unions of publishing their plans?**

Unions are likely to incur significant additional costs and administrative duties if the government's proposals requiring unions to publish protest and picketing plans proceed. These will include:

- Depending on the nature of the dispute, unions will be required to gather detailed information from union national, regional and branch officials on their proposed campaign plans, including the use of twitter, Facebook accounts, websites and blogs. This could involve significant levels of staff time, especially where disputes involve large groups of members, more than one employer and more than one worksite.
- Unions will be required to undertake excessive and detailed monitoring of campaign activities during the course of a dispute in order ensure that the notices are accurate and up to date.
- Unions may be more vulnerable to legal challenge as a result of this new statutory duty. They will therefore need to pay for additional legal advice during disputes and to meet the substantial costs arising from any litigation.
- If the Certification Officer is tasked with supervising union activities on a 'real-time basis, this is likely to increase significantly the levy charged to unions to cover the running costs of the Certification Office. Unions may be required to pay for the appointment of additional inspectors. Inspectors are likely to generate significant travel and accommodations costs as they rotate around the country monitoring union protests and pickets in real time. Unions will be

expected not only to accept additional supervision of their activities but also to pay for the privilege.

#### **Question 7:**

##### **What are your views on the Government's proposal to strengthen accountability?**

The TUC does not agree that unions should be required to report annually to the Certification Officer about public demonstrations and picketing activity that has taken place in the preceding year.

The TUC cannot see any benefits which will be achieved from this proposal. However this measure would have significant detrimental effects. It would mean that union industrial activities will be subjected to unprecedented scrutiny. The TUC strongly believes it is unreasonable to require unions to report on any arrests which have taken place.

The proposal will impose significant administrative burdens on unions with union national officers being required to gather detailed information from branches and regional offices. Union national offices will already be aware where the unions plan to ballot for industrial action. Union committees or senior officials, including General Secretaries, will also often already need to authorise both ballots and any subsequent industrial action. However, union head offices are unlikely to gather detailed information on campaign activities, including pickets, undertaken at a local level. Such campaign plans will be developed and overseen by the union's branch committees or regional structures. In the future, union national officials will need to spend time and resources gathering such data and undertaking details monitoring of the activities of union members.

This will inevitably divert scarce union resources away from representing union members. It will also mean that union officials have less time to devote to working with employers and to avoiding future disputes. The proposals will therefore undermine constructive employment relations.

It is also likely that employers will object to information detailing disputes in specific workplaces being published online and to a permanent record of disputes being retained. Strikes are a symptom of poor industrial relations rather than the cause. Many employers may be concerned to find that the government is proposing that detailed information about their workplace operations will be made publicly available.

#### **Question 8:**

##### **Do you have any other suggestions how union accountability and/or transparency could be improved?**

Unions are democratic organisations which are highly accountable to their members. Responding to and representing the interests of their members is the core *raison d'être* for all trade unions. Effective communication with members is essential for all trade unions. Unions remain accountable to members through newsletters, correspondence, branch meetings, union conferences and by running

indicative ballots and surveys. Unions that fail to communicate and remain accountable are likely to find it difficult to retain members.

The TUC believes that how unions engage with their members is a matter for the unions concerned and should not be the subject of state intervention.

In the UK, trade unions are subject to wide-ranging regulation. As a result, the UK has been repeatedly criticised by international supervisory bodies, including the ILO Committee of Experts and the European Social Rights Committee which supervises compliance with the European Social Charter (1961). The TUC believes that rather than imposing additional red tape on unions, the government should repeal many of the administrative burdens on unions contained in TUL(C)RA 1992.

### **Question 9:**

#### **Do you have any figures that would enable us to improve the estimates in the Impact Assessment of the cost to unions to report on industrial action in their annual reports?**

As noted above, if these proposals are implemented, unions are likely to incur significant additional costs. If these proposals are implemented, in the future, union national officials will need to spend time and resources gathering data from union workplace reps and regional officials. This will inevitably divert scarce resources away from representing union members and from ensuring that disputes are avoided or resolved without the need for industrial action.

It is difficult for the TUC and unions to provide in depth costings until the government publishes more detailed proposals and unions are made aware of what any new reporting requirements will involve.

It is, however, important that the government does not consider the impact of this proposal in isolation from other measures in the Trade Union Bill. Unions will also incur significant additional costs from the following:

- The new duty to report annually to the Certification Officer on where industrial action has taken place and on the outcomes of industrial action ballots.
- The new duty to report annually to the Certification Officer on political fund expenditure.
- The levy which will be charged to unions to cover the running costs of the Certification Office.
- The requirement to re-ballot members where industrial action will continue for more than 4 months.
- The proposal that unions must prepare and update picketing and protest plans.
- Caps on facility time within public services which will increase workloads for national union officials.
- The removal of ‘check-off’ facilities in the public sector, which will require some unions to institute significant organisational changes, even though check-off arrangements have been voluntarily agreed with employers.

### **Question 10:**

#### **How should the Code be updated to be more useful for parties affected by industrial disputes? Please explain your answer.**

In the TUC's opinion, the Code of Practice does not need to be strengthened. If anything the existing Code is too restrictive. Nevertheless, as the BIS consultation document acknowledges most union activity complies with the Code. It therefore is effective as a form of regulation. If the text is to be amended, the TUC believes that the Code should include advice to employers on the importance of not intimidating union members with a view to deterring members from participating in industrial action or victimising those who do.

The TUC also agrees that it would be helpful if the Code of Practice gave increased prominence to the rights of workers who participate in industrial action. We agree that the Code should state that workers must not be dismissed and should not suffer detriment because they decide to strike or to picket or protest at their workplace or away from their workplace. However, the TUC is not convinced that guidance alone will be sufficient to ensure that individuals are not subjected to intimidation, victimisation or detriment because they exercise their fundamental rights.

Legislative reform is also needed. The following proposals should be implemented:

- Dismissals in anticipation of, during or after lawful industrial action should be void and ineffective, unless the employer can show that the reason for the dismissal was not connected to the industrial action.
- It should be automatically unfair for an employer to dismiss an employee once he or she returns to work following lawful industrial action. This will act as a powerful disincentive to employers from employing replacement staff, dismissing strikers and making them redundant.
- Interim relief should be available in all unfair dismissal claims relating to lawful industrial action and employees who have been unfairly dismissed should be entitled to automatic reinstatement if they request it.
- All workers should be protected from suffering detriment or for being sued for damage as a result of their taking part in industrial action other than appropriate deductions from wages for work not done due to industrial action.